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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 192

SOMERSET MACHINE & TOOL COMPANY, a copartnership consisting of EVERETT J. CANNING, J. H. CANNING, and DORIS CANNING,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

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Rose Bros. (W.B. BCA No. 366, 1943) 1 CCF 899 7

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Staple Coat Corporation (W.D. BCA No. 93, 1943) 1 CCF 126 7
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MISCELLANEOUS.

Corbin On Contracts, Arthur Linton Corbin, One Volume Edition 1952, West Publishing Company, pp. 20-21 15
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vs.

THE UNITED STATES OF AMERICA,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS.

Petitioner prays that a writ of certiorari issue to the United States Court of Claims to review a judgment of that Court dismissing petitioner's claim on the ground (a) that its petition failed to state a cause of action under the Contract Termination Act of 1944 for want of privity of contract between the United States and petitioner and because no contracting agency had assumed the obligation to settle petitioner's claim, and (b) the contracting officer of the Chicago Ordnance District denied the claim on 28 February 1956 and it is barred because the claim was not filed in the Court of Claims until 21 January 1958 after time to appeal dating from 28 February 1956 had expired and more than six years after the cause of action, if any, had accrued.